

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MEDILINK INSURANCE COMPANY, LIMITED,

Plaintiff,

v.

Case No. 09-13692

COMERICA BANK,

Defendant.

MEMORANDUM IN PREPARATION FOR ORAL ARGUMENT

Pending before the court are motions for summary judgment by Plaintiff Medilink Insurance Company, Limited, and Defendant Comerica Bank. The court will hear oral arguments from the parties on January 5, 2011. Having reviewed the parties' briefs and the record, the court finds that hearing is unnecessary on several issues of law. In the interests of judicial economy and clarity of argumentation, therefore, the court encourages the parties to focus their arguments on the following issues:

1. the legal relationship between Bender and Medilink, with particular attention to whether Bender stood in the position of a fiduciary of Medilink;
2. the applicability of the Adverse Claim Statute, Mich. Comp. Laws § 487.691, if Bender should be found to be a fiduciary of Medilink;
3. the propriety of granting relief upon Medilink's equitable count of unjust enrichment, if Comerica should be found to have had knowledge of Bender's means of obtaining the funds in his accounts at the time of the set off;

4. the propriety of finding the existence of a constructive trust, with particular attention to whether the funds can be sufficiently traced that a *res* may be found for such trust; and
5. the basis upon which Medilink asserts Comerica owed it fiduciary duties, with particular attention to whether these duties are supposed to arise out of the accounts with Comerica's Institutional Trust Department.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 30, 2010

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 30, 2010, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522